



## COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

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GAIL FARBER, Director

ADDRESS ALL CORRESPONDENCE TO:  
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ALHAMBRA, CALIFORNIA 91802-1460

May 15, 2012

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

### ADOPTED

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

54 May 15, 2012

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

**FIND CONTRACTOR IN DEFAULT  
BRIDGE SEISMIC RETROFIT  
QUEENSWAY SOUTHBOUND RAMPS J & K OVER HARBOR SCENIC DRIVE  
CITY OF LONG BEACH  
(SUPERVISORIAL DISTRICT 4)  
(3 VOTES)**

### **SUBJECT**

This action is to find the contractor, A.M. Classic Construction, Inc., in default of the contract; authorize the Director of Public Works or her designee to terminate A.M. Classic Construction, Inc.'s, right to perform under the contract; serve written notice on the project surety, Arch Insurance Company of America, to complete the work of the contract; and enter into an agreement with Arch Insurance Company of America for the completion of the work of this contract.

### **IT IS RECOMMENDED THAT YOUR BOARD:**

Find the contractor, A.M. Classic Construction, Inc., in default of the contract; authorize the Director of Public Works or her designee to terminate A.M. Classic Construction, Inc.'s, right to perform under the contract; serve written notice on the project surety, Arch Insurance Company of America, to complete the work of the contract; and enter into an agreement with Arch Insurance Company of America for the completion of the work of this contract.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

On December 2, 2008, your Board advertised and delegated authority to the Director of Public Works (Director) or her designee to award and execute a contract with the apparent responsible contractor with the lowest responsive bid, and on March 17, 2009, the Department of Public Works

(Public Works) awarded a contract to A.M. Classic Construction, Inc., (A.M. Classic), for the seismic strengthening of the Queensway Southbound Ramps J and K over Harbor Scenic Drive project. On April 15, 2010, Public Works issued the Notice to Proceed, and the contractor commenced the project.

In 2010, A.M. Classic presented Public Works with delay and other claims associated with the project. On November 19, 2010, A.M. Classic demobilized from the project site. Ultimately, on July 5, 2011, your Board authorized a change order which represented a full and final settlement for all of the contractor's preceding claims. Subsequently, a Notice to Proceed to restart the project was issued to A.M. Classic with a new start date of August 8, 2011. After raising multiple disputes after this restart, A.M. Classic stopped work on November 23, 2011. The project is approximately 40 percent complete.

On January 18, 2012, Public Works issued a Corrective Cure Notice requesting A.M. Classic to complete the pile caps at each of the three locations where pile driving had been performed in order to stabilize those portions of the bridge, but A.M. Classic chose not to proceed.

On February 2, 2012, Public Works sent A.M. Classic a Notice to Cure (the Notice) its abandonment of the work on the project, identified the specific items of work that needed to be performed, and gave A.M. Classic ten working days to cure its breaches. The Notice stated that Public Works would recommend to your Board that A.M. Classic be found in default of the contract if A.M. Classic did not return to work and cure its breaches. The Notice also offered A.M. Classic the opportunity to be heard and present evidence as to why A.M. Classic should not be determined to be in default of the contract. A.M. Classic failed to comply with the request to cure the abandonment of the work and instead requested a hearing to present evidence as to why they should not be terminated.

On April 4, 2012, a hearing was held at which both A.M. Classic and Public Works presented their respective cases to a hearing officer. A subsequent meeting was requested by the hearing officer and held on April 10, 2012, to allow for a number of follow-up questions after the hearing officer had the opportunity to review the evidence presented at the initial hearing.

The hearing officer provided his findings and conclusion on April 30, 2012 (copy enclosed), that Public Works does have a reasonable basis for a recommendation to terminate this contract for default.

As such, Public Works is recommending that your Board adopt this action to find the contractor, A.M. Classic in default of the contract and authorize the Director of Public Works or her designee to terminate A.M. Classic's right to perform under the contract and serve written notice on the project surety, Arch Insurance Company of America (Arch) to complete the work of the contract and to enter into an agreement with Arch for the completion of the work of this contract.

### **Implementation of Strategic Plan Goals**

The Countywide Strategic Plan directs the provision of Operational Effectiveness (Goal 1). The recommended action will provide for completion of the work at no additional cost to Public Works except for administrative expenses.

### **FISCAL IMPACT/FINANCING**

There will be no impact to the County General Fund.

There will be minimal fiscal impact as the surety will assume responsibility for completing the work of the contract for the original contract price.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The contract provides for termination of A.M. Classic's right to perform if the contractor fails to prosecute the work; to provide workers, materials, or equipment to complete the work; or fails to promptly pay its subcontractors, employees, and material suppliers. Here, A.M. Classic stopped working on the project on November 23, 2011. Although A.M. Classic claimed it stopped work due to the actions or inaction of the County, the hearing officer determined that none of the claimed acts or failures to act were valid reasons for A.M. Classic to stop working on the project.

### **ENVIRONMENTAL DOCUMENTATION**

On April, 17, 2007, Agenda Item 44, your Board found this project statutorily exempt from the provisions of the California Environmental Quality Act.

### **CONTRACTING PROCESS**

In accordance with the project's performance bond requirements, the surety is obligated to step in and complete the work.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

It is not anticipated the recommended action will have a significant impact on residents or motorists. When the project is completed, it will have a positive impact by providing more reliable bridge infrastructure for the traveling public during and immediately following seismic events.

### **CONCLUSION**

Please return one adopted copy of this letter to the Department of Public Works, Construction Division.

The Honorable Board of Supervisors

5/15/2012

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Respectfully submitted,

A handwritten signature in black ink that reads "Gail Farber". The script is cursive and fluid, with the first name "Gail" and last name "Farber" clearly legible.

GAIL FARBER

Director

GF:JTS:lg

Enclosures

c: Chief Executive Office (Rita Robinson)  
County Counsel  
Executive Office  
Internal Services Department (Countywide  
Contract Compliance)

**LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS  
PROJECT ID. NO. RDC0012103  
BRIDGE SEISMIC RETROFIT  
QUEENSWAY SOUTHBOUND RAMPS J & K OVER HARBOR SCENIC DRIVE**

**HEARING ON DEFAULT OF:  
A.M. CLASSIC CONSTRUCTION, INC.**

**REPORT OF HEARING OFFICER**

**Hearing Date: April 4 and 10, 2012**

**Hearing Officer:**

**David P. Howard, P.E.  
Assistant Deputy Director  
Department of Public Works**

### **Introduction**

As outlined in a letter dated March 8, 2012, to Mr. Asghar Madhavi, A.M. Classic Construction, Inc. (AM Classic), from Mr. William J. Winter, Deputy Director of the Department of Public Works (Public Works), a hearing was convened to consider whether there are grounds for termination by default of the Contract between AM Classic and the County of Los Angeles (County) for the subject construction project. This hearing took place on April 4 and 10, 2012, at Public Works Headquarters in Alhambra, California.

The Hearing Officer was Mr. David Howard, Assistant Deputy Director of Public Works. Ms. Behnaz Tashakorian, Deputy County Counsel, provided legal advice to the Hearing Officer. AM Classic was represented by: Ms. Nancy Madhavi, Mr. John Gladych, and Mr. Michael Cornelius. Public Works was represented by: Mr. Winter, Mr. Jim Sparks, Mr. Ken Swanson, Ms. Jolene Guerrero, Mr. Laren Bunker, Mr. Neil Katz, Ms. Rosanna D'Antonio, Mr. William Mann, and Ms. Beverly Guan, and Ms. Rosa Linda Cruz, counsel for Public Works. In addition, representatives of AM Classic's surety company, Arch Insurance Company, were present, as was a court reporter. Mr. Gladych was not present on April 10, 2012. Mr. Winter was not present on April 4, 2012.

A transcript was prepared by the court reporter, and, therefore, this report will not attempt to summarize the hearing.

A similar hearing between these parties related to this project was conducted on April 8, 2011; Mr. Howard served as the hearing officer in that hearing as well.

### **Purpose of the Hearing**

The purpose of the hearing was to determine whether or not there are grounds for termination of the Contract by default. The purpose of the hearing was not to decide between a termination for convenience or default.

### **Documents Considered**

Both parties have provided all documents prior to hearing. Neither party was allowed to submit documents to the hearing officer on the day of the hearing, and the hearing officer did not consider documents submitted following the hearing except for two documents that he specifically requested be submitted, which are: 1) Attachments to the October 26, 2011, letter from Stoney-Miller Consultants, Inc., and 2) Pages 16 and 17 of the Project Plans.



The documents that were provided to the hearing officer and considered in this matter are as follows:

- AM Classic's Claim Entitlement Report dated January 30, 2012
- Exhibit Binder that accompanied AM Classic's January 30, 2012, Claim Entitlement Report
- Public Works' March 8, 2012, letter to Mr. Asghar Madhavi
- Public Works' Hearing Brief and Response to AM Classic's January 30, 2012, Claim Entitlement Report (including Attachments A-Z)
- Michael Cornelius' April 1, 2012, letter with attachments
- Nancy Madhavi's April 3, 2012, letter
- Attachments to October 26, 2011, letter from Stoney-Miller Consultants, Inc. (Requested by the Hearing Officer)
- Pages 16 and 17 of the Project Plans (Requested by the Hearing Officer)

### **Issues and Discussion**

- 1) The Contract in Section 12 provides conditions under which the County "may terminate the Contractor's right to proceed with the work." In Public Works' Hearing Brief and Response to AM Classic's January 30, 2012, Claim Entitlement Report ("Hearing Brief") failure to prosecute the work and failure to make timely payment of subcontractors and employees are stated as the basis of the recommendation to terminate.

From the evidence provided, there is no dispute that AM Classic discontinued work on the site on or about November 23, 2011, and did not resume work when directed to do so in Public Works' letters dated January 18, 2012, and February 2, 2012. There is also documentation of outstanding stop notices; indicating that subcontractors and/or material suppliers had not received payment. These facts appear to provide sufficient grounds for the County to exercise its contractual right to terminate the Contract for default.

- 2) The Contract in Section 12 states "the Contractor's right to proceed will not be terminated because of delays, nor will the Contractor be charged with damages under the subsection, if: a) the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor (examples of such causes include: (iii) acts of the Agency in either its public or contractual capacity)."

In AM Classic's presentation, AM Classic did not dispute the facts which the County cites for its recommendation of termination for default - that AM Classic

discontinued work, did not recommence work when directed to do so, and that AM Classic had unresolved stop notices. Rather, AM Classic claimed that it was actions of the County that prevented AM Classic from being able to make progress on the project, and that this both increased AM Classic's costs, as well as preventing them from generating revenue.

AM Classic alleged that the County acted in a punitive manner towards AM Classic, failed to follow through on commitments, and by its actions prevented AM Classic from being able to successfully complete the project. AM Classic argued that the Contract should not be terminated for default as recommended by the County but rather be terminated for the convenience of the County.

In accordance with the purpose of the hearing this review is focused on confirming whether or not there are grounds for termination by default.

- 3) AM Classic's Claim Entitlement Report ("CER") and the other documents provided by AM Classic, consistently argue that the root cause of AM Classic discontinuing work on the project was actions on the part of the County. The issues listed in the CER can be summarized as follows:

- a) Lack of Escalation Process
- b) Early Issuance of Notice to Proceed (NTP) 2
- c) Pile Tip Elevation
- d) Weld Splicing
- e) Prompt and Proper Payment

In order to render a fair and informed opinion on the grounds for termination for default, each of these issues has to be individually considered, and the validity and significance of each item, as well as the list as a whole must be considered. Following is a brief summary of each item and my related findings.

I. Lack of Escalation Process

According to the evidence submitted, both sides agreed during the restart meetings in May and June 2011 that it would benefit the project to establish process for escalating disputed issues. This process was also recommended in the Hearing Officer's report on April 21, 2011.

It should be noted that neither party was contractually obligated to agree to such a process, and further that the Contract documents already provide direction of how to handle disputes (Greenbook Section 3-5).



Nevertheless, given the history of contention and distrust between the parties, a process by which disputes could be raised to higher levels of management rather than being allowed to bog down in protracted disagreement is a widely practiced model on successful projects. Unfortunately, the parties were unable to even agree on the details of how to implement such a process.

AM Classic argued that approval of the process was on the critical path of the project and was a necessary successor to the issuance of the NTP. While it may have been helpful, there was no contractual obligation to do so. In drafting the proposed process, there was disagreement between the parties regarding the conditions under which an issue could be escalated to higher levels of management. Public Works' proposed condition of limiting the dollar amount of items to be escalated was not unreasonable.

It is not clear that the lack of agreement on how to implement an escalation process was more the responsibility of one party or the other. However, there was a delay of several weeks for the County to respond to AM Classic's August 29, 2011, comments of the draft process, and on October 6, 2011, Mr. Winter acknowledged that the procedure needed to be finalized.

While AM Classic more vigorously advocated for a process, that by itself can be misleading. Typically in these processes, the disputed issue is raised to higher level staff in both organizations, whereas here AM Classic was represented by its owner and his consultant at all levels, and, therefore, escalation became a one-sided appeal process.

Even though a formal escalation process was not ultimately established, the evidence indicated that Public Works' Deputy Director, Mr. Winter, did take an active role in the project. The evidence provided does not show the lack of a formal escalation process to be a failure on the part of the County, or a justification for AM Classic to discontinue work on the project.

## II. Early Issuance of NTP 2

The CER and other documents from AM Classic mention the issuance of a NTP for restart of the work as being mishandled by the County and ultimately impacting AM Classic's ability to successfully perform the

work. The CER makes the argument that the NTP should not have been issued without prior approval of an escalation process and approval of other submittals. The escalation process was dealt with above. During questioning at the hearing, the criticality of the other submittals as preconditions of issuing the NTP was not satisfactorily demonstrated.

In its April 3, 2012, letter, AM Classic presented a different argument regarding the restart of work. It is stated that the AM Classic required time following receipt of the start-up payment to pay bills and obtain a new piece of equipment, and that the NTP should have been postponed to allow for this.

However, the schedule for the restart of the work prepared by AM Classic on June 20, 2011, and approved by the County on June 30, 2011, is not consistent with that argument. The approved schedule shows a 2-week duration between receipt of payment and issuance of NTP, and then remobilization of pile driving equipment on the day following NTP. According to the evidence provided, the payment was actually received on July 27, 2011, and the NTP directed work to begin on August 8, 2011, 2 days less than 2 weeks. However, pile driving equipment was not remobilized for approximately 3 weeks following the effective date of the NTP.

The evidence provided does not demonstrate that failure to approve project submittals prior to issuing the NTP, to have a negative impact on the project, nor does this appear to be an unfair action on the part of the County. Rather, the evidence shows that AM Classic did not follow the project schedule that they had prepared. Nothing about this issue was shown to be a justification for AM Classic to discontinue work on the project.

### III. Pile Tip Elevation

The project is the seismic retrofit of an existing bridge structure. Part of the seismic strengthening work involved expanding and strengthening existing foundations beneath the seven bridge piers ("bents"). This strengthening process included installing steel pipe piles near the existing bents. The piles needed to be driven into the ground using mechanical equipment. The depth to which the piles had to be driven was the focus of much disagreement between the parties. The

disagreement was focused primarily on the three most northerly bents (Bent J2, J3, and K2).

AM Classic made the primary argument that the piles at Bents J2, J3, and K2 ("northerly bents") were extremely difficult to install. They claimed that the difficulty in installing the piles was a result of the soil conditions in the field being different than what was shown on the plans. They argued that the difficulty in installing the piles was resulting in damage to the pile driving equipment, which both delayed the work and resulted in additional costs. They further argued that the strength that was needed to be obtained from these piles in order to meet the design criteria for the bridge retrofit could be obtained without driving the piles to the depth specified in the design. In addition, AM Classic argued that the County was not reasonable or responsive in addressing these concerns, and that the County failed to follow through on understandings reached between the parties during a series of meetings in May and June 2011 following the previous shut down of the project.

Regarding the difficulty in driving the piles, this is a complex issue that involves multiple factors regarding design, soils engineering, and construction. From a design perspective, the question is whether there was sufficient and accurate subsurface investigation conducted by the County prior to bid of the project, so that AM Classic and the other bidders could estimate and price the level of effort required to construct the project. This was the subject of a good deal of debate about whether the soil boring used for the design of the northerly bents was taken close enough to the site of construction, so that it accurately depicts the underground conditions. AM Classic argued that they encountered hard material at a shallower depth than expected and this made it both difficult and unnecessary to go deeper.

The County argued to the contrary that the difficulty in driving the piles should have been anticipated based on the information provided in the plans, and also that the difficulty in driving was at least in part attributable to a hardening of the soil resulting from consolidation of the sandy material immediately following pile driving. The plans support the position that difficult driving conditions should have been expected. The County also argued that the soil consolidation condition should have been anticipated, and that with proper construction methods, this condition could be overcome and piles could be successfully driven.



The County argued and provided evidence to show that AM Classic had frequent maintenance problems with the vibratory hammer that is used to vibrate the piles into the ground (versus the impact hammer which pounds the piles downward with a direct pounding force). The County further argued that the vibratory hammer is more effective in working with the soil type present at the site, and in particular in overcoming the soil hardening condition mentioned. The documentation provided supports both assertions that the vibratory hammer frequently malfunctioned, and, that when working, it appeared to be the more effective means of installing the piles. With limited use of the vibratory hammer, AM Classic relied heavily on the impact hammer with only limited success.

In November 2011, the County agreed with AM Classic that the necessary capacity in the piles could be obtained at a shallower depth, and agreed to allow for termination of the piles at a reduced depth. The County did not agree with AM Classic that the site conditions differed in a material way from what was shown on the plans, but did provide testimony during the hearing that the original design may have been conservative in nature. This position led to a further disagreement regarding how the cost savings recognized by the installation of shorter piles would be divided between the parties.

On November 10, 2011, the County agreed via a unilateral change order to accept elevation -50.00-feet as the revised tip elevation. This resolved the field construction issues, but AM Classic did not want to accept the cost saving allocation although it was specified in the Contract. The Contract documents support the County's position that the Contractor was obligated to drive the piles to the full depth specified in the plans. Further, the specifications provide a means by which AM Classic can propose to reduce the pile depth, and how this cost savings is to be allocated. The County followed these provisions.

The evidence supports the County's position that it handled this issue in accordance with the Contract documents. It is clear that shallower pile depths were acceptable from a strength perspective. It is also clear that the time and effort spent getting to this resolution did not contribute to a good outcome on the project. AM Classic's decision to discontinue work is not an acceptable remedy to any disagreement it may have had with the County regarding the cost of the work.

IV. Weld Splicing

This general topic includes two primary disputes and several related disputes. The primary issues include the responsibility for the delay in pile driving resulting from weld splices that were rejected by a County inspector, and the County's insistence that gaps greater than 0.25-inch between a pipe pile and the backer bar could not be filled with weld material.

a) Rejected splices

Both parties agree that a number of pipe welds were rejected by an inspector working for the County in September 2011, and that the County directed the driving of the effected piles to discontinue until these were repaired. Both sides also agree that in October 2011 these welds were subsequently retested and shown to be acceptable. The County contends that the incorrect test results occurred because AM Classic did not provide the inspector with background information that was needed to accurately perform the test and that this was required per the specifications. AM Classic contends that the initial inspector was not qualified, and that the County was not responsive to AM Classic's efforts to retest the welds. The evidence showed that nearly 3 weeks elapsed between the failed test and the agreed retest. Given that work on these piles was stopped during this period, this matter should have been pursued more vigorously by the County.

The County argued that the delay was at most a concurrent delay. However, this argument of concurrency implies an admission of responsibility for the errant test, which contradicts the previous argument about the inspector not being provided with required information. Further, the County's decision to reimburse AM Classic for the cost that AM Classic incurred in conducting its own retest of the welds also conflicts with the position that the cause of the errant test was a failure by AM Classic to provide needed information to the inspector. Both sides argued about whether this delay was a critical path delay, but neither position was well substantiated.



b) Gaps Greater than 0.25-inch

The evidence is clear that prior to the first shutdown of the project, the County's welding inspector accepted filling gaps greater than 0.25-inch with weld material. The evidence is also clear that the specifications do not allow for this. Following the restart of the project, the new County resident engineer insisted on full compliance with the specification.

AM Classic stated the position that this strict enforcement of the specification was a punitive act on the part of the County. The allegation was not substantiated. While the County offered no explanation for this change in its position on enforcing the terms of the Contract, it is without question within its rights to do so.

AM Classic's consultant also alleged that the County had replaced their original welding inspector during the project shut down with the intent to harm AM Classic. No evidence of bad intent was provided. Instead the County presented a reasonable argument that the inspector had to be changed due to limitations in the County's Contract with the inspector's firm.

Overall, regarding the weld splicing issue, the remains a dispute between the parties about whether AM Classic is due additional compensation for delay related to this issue. The hearing was not intended to resolve this matter. Regardless of that dispute, the weld splice issue does not provide grounds for AM Classic to discontinue work on the project.

V. Prompt and Proper Payment

AM Classic, in its CER and also in its letter on April 3, 2012, made an additional argument that the County did not make fair payment to AM Classic for work completed on the project. This was alleged to include both fair payment for base contract work and fair payment for change orders. Very little documentation was provided regarding this allegation. From the evidence provided, this claim cannot be substantiated.

The documents provided to the Hearing Officer make reference to a report purportedly prepared by Caltrans and/or FHWA that was described as being a review of the way in which the County had administered this project. AM Classic

argued that this report was relevant to the hearing as it may potentially support AM Classic's allegations of poor conduct on the part of the County in administering the Contract. This report was not included in the documentation provided to the Hearing Officer. During the hearing, the Hearing Officer requested a copy of the report for his review, and the response from the County was that this report is a protected document and not subject to disclosure. As such, this documentation was not taken into consideration by the Hearing Officer.

### **Findings**

- 1) AM Classic's decision to discontinue work is clearly a contractual basis for termination for default. This is an extremely unusual step for a Contractor to discontinue working in the middle of construction; especially since this project involves a very important bridge serving the Port of Long Beach
- 2) AM Classic's allegations of misconduct by Public Works staff during the course of the project were not substantiated by the evidence. It was clear, however, that there was a general tone of distrust between the two parties that contributed to the difficulty in resolving disagreements on the project. Public Works was not demonstrated to have acted in bad faith, and consistently acted within its rights in enforcing the terms of the Contract. However, certain steps could have been taken more promptly to assist AM Classic in completing the work.

### **Conclusion**

After careful review of all the evidence, AM Classic has not demonstrated the actions of the County either individually or collectively prevented AM Classic from performing its work under the Contract. It is my conclusion that the decision of AM Classic to discontinue work on the site provides Public Works with a reasonable basis for a recommendation to the Board of Supervisors to terminate this Contract for default.

Respectfully Submitted,



DAVID P. HOWARD, P.E.  
Assistant Deputy Director  
Department of Public Works

Date: 30 April 2012